

ESTTA Tracking number: **ESTTA421256**Filing date: **07/22/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Briggs & Stratton Corporation
Granted to Date of previous extension	07/24/2011
Address	12301 West Wirth Street Wauwatosa, WI 53222 UNITED STATES

Correspondence information	Briggs & Stratton Corporation 12301 West Wirth Street Wauwatosa, WI 53222 UNITED STATES ipdocket-chi@reedsmith.com
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**Applicant Information**

Application No	78924545	Publication date	01/25/2011
Opposition Filing Date	07/22/2011	Opposition Period Ends	07/24/2011
Applicant	Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.) No. 1-1, 2-Chome, Minamiaoyama Minato-Ku, Tokyo, 107-8556 JAPAN		

**Goods/Services Affected by Opposition**

Class 007. First Use: 1983/10/00 First Use In Commerce: 1984/12/00  
All goods and services in the class are opposed, namely: engines for use in construction, maintenance and power equipment

**Grounds for Opposition**

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Other	The opposed application is not inherently distinctive and has not acquired distinctiveness in accordance with Section 2(f) of the Federal Trademark Action, 15, U.S.C. Section 1052(f).

Attachments	Notice of Opposition.pdf ( 7 pages )(1115723 bytes )
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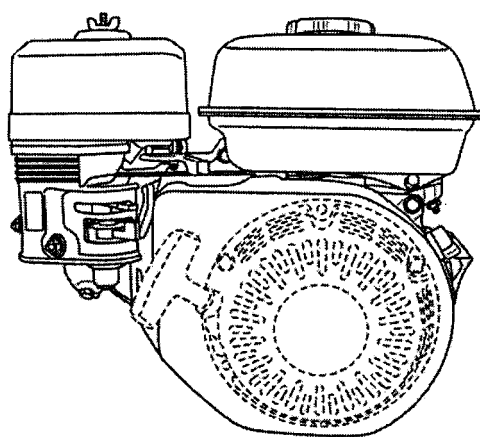
**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Robert N. Phillips/ Reed Smith for
Name	Briggs & Stratton Corporation
Date	07/22/2011



the air cleaner located to the left of the fuel tank. The air cleaner cover features a cube shape with beveled top outside edges, and a belt-like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a rib of the fuel tank. The carburetor cover features four ribs along its outside edge and a recessed area where control levers are located. The fuel tank is roughly rectangular. The engine features a beveling that runs around its top circumference.” (hereinafter “Engine Design”):



(2) The opposed application was filed on July 7, 2006, by Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan having its principal place of business at No. 1-1, 2-Chome, Minamiaoyama Minato-Ku, Tokyo JAPAN 107-8556, based on a claim of use since 1983 under the Federal Trademark Act, 15 U.S.C. § 1051(a).

(3) On information and belief, the Engine Design as shown and described in the opposed application is not inherently distinctive and has not acquired distinctiveness in accordance with § 2(f) of the Federal Trademark Act, 15 U.S.C. § 1052(f).

(4) On information and belief, the Engine Design as shown and described in the opposed application is functional.

(5) For the reasons stated above, Applicant is not lawfully entitled to a registration of the Engine Design as a trademark under the provisions of the Federal Trademark Act, 15 U.S.C. § 1051 *et seq.*

(7) Opposer manufactures and sells engines including but not limited to Opposer's 550 Series Engine. A photograph of the 550 Series Engine is annexed hereto as Exhibit A and made a part hereof.

(8) Applicant has claimed that Opposer's 550 Series Engine infringes Applicant's alleged trademark rights in the Engine Design. Opposer denies that its 550 Series Engine infringes any trademark rights of Applicant in the Engine Design on several grounds, including but not limited to, the nondistinctiveness and lack of secondary meaning in Applicant's Engine Design, the functionality of Applicant's Engine Design, Applicant's lack of use of the Engine Design as a trademark, the substantial differences in appearance of Applicant's Engine Design and Opposer's 550 Series Engine, Applicant's tolerance of third party engine designs more similar in appearance to Applicant's Engine Design, Applicant's prominent placement of the HONDA trademark on the Engine Design, Opposer's prominent placement of the BRIGGS & STRATTON trademark on the 550 Series Engine, the sophistication of the parties' consumers, and the absence of any actual or likely confusion between Applicant's Engine Design and Opposer's 550 Series Engine.

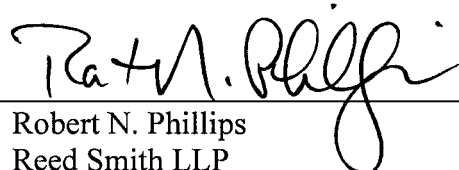
(9) For all of the foregoing reasons, Opposer has an interest in this matter and standing to oppose the subject application.

WHEREFORE, Opposer believes that the present opposition should be sustained and registration of the Engine Design as a trademark refused.

The requisite filing fee for this Notice of Opposition is submitted herewith.

BRIGGS & STRATTON CORPORATION

Dated: July 22, 2011

By:   
Robert N. Phillips  
Reed Smith LLP  
101 Second Street  
San Francisco, CA 94105

and

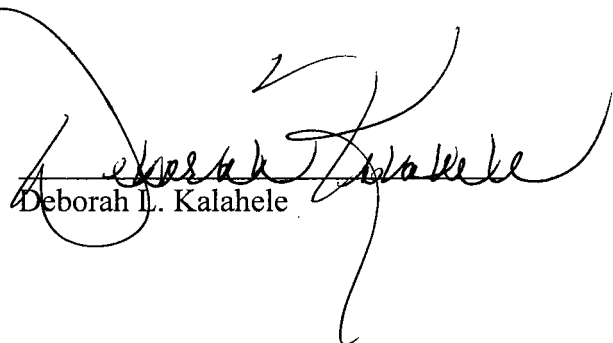
Nina Habib Borders  
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Chicago, IL 60606

Attorneys for Opposer

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Notice of Opposition was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 22nd day of July, 2011:

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Deborah L. Kalahale

# **EXHIBIT A**



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550 SERIES

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Key Features

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OHV

The 550 Series engine utilizes Overhead Valve (OHV) technology. It features automotive-style air filter, cast iron cylinder sleeve, and dual ball bearings.

Series Features

Features	Benefits
Overhead Valve Design (OHV)	Runs cooler and cleaner delivering more power, smoother operation, longer engine life, and economy
Compact and Dependable Power	Excellent performance for mid-duty utility applications
Dura-Lube™ Splash Lubrication System	Gear driven system continuously supplies internal parts
Automotive-Style paper filter	Protects engine from dirt to extend engine life
Cast Iron Cylinder Sleeve	Withstands wear and abuse while providing control
Dual Ball Bearings	Reduces wear for longer life
2.0 Quart Fuel Tank	For long run time




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